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WASHINGTON NOTES

STRENGTHENING THE ELKINS ACT

THE STEEL MERGER

REORGANIZING SOME DEPARTMENTS

CHECKS AND CREDIT INSTRUMENTS

A ROUNDED REVENUE SYSTEM

Important support for the principle involved in the Elkins anti-rebate law has been furnished by the federal Supreme Court in its decision of February 23, 1909, affirming the decrees of the Circuit Court in the case of New York Central Railroad Co. *vs.* The United States which came up from the Circuit Court of the United States for the Southern District of New York, and in the case of American Express Co. and others *vs.* The United States which came to the Federal Court from the Circuit Court for the Northern District of Illinois (Nos. 69, 57, and 285, October Term, 1908; and Nos. 405-409, October Term, 1908). The New York Central case involved the question of rebates paid to the American Sugar Refining Co. of New Jersey and others. It was agreed that for sugar shipped over the line, the full tariff rate being paid thereon, the railroad company should give a rebate of five cents for each 100 lbs. In the Supreme Court the attempt to rebut the findings of the lower court against the New York Central was chiefly based upon certain claims affecting the constitutional validity of the Elkins Act. It was maintained that the provision of that act whereby anything done by a corporation, which if done by a director would constitute a misdemeanor, should also be held to be a misdemeanor committed by the corporation, was unconstitutional because Congress had no authority to impute to a corporation the commission of criminal offenses or to subject a corporation to a criminal prosecution by reason of the things charged. On this the court holds that while "it is true that there are some crimes which in their nature cannot be committed by corporations," it is also true "that there is a large class of offenses, of which rebating under the federal statutes is one, wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes we see no good reason why corporations may not be responsible for and charged with the knowledge and purposes of their agents acting within the authority conferred upon them." A second important point dealt with in this decision is found in the conclusion that

a road is guilty of rebating if it even participates in an illegal rate involving a rebate, which is put into effect by a connecting line. The court points out that "the statute specifically provides that the published rate shall be deemed in any prosecution under the act to be the legal rate as against the carrier who files the same, or participates in any rates so filed and published, and the section further provides that any departure from such rate which would include the rates either published or participated in, shall be deemed to be an offense under the act." On the strength of this the court announces the opinion, never heretofore expressed, that "we think the learned judge was in error in holding that offenses of the character charged in this indictment could be prosecuted only as against the carrier actually filing and publishing a joint rate."

In reaching a decision to report to the Senate against the President's act in authorizing a merger between the United States Steel Corporation, and the Tennessee Coal & Iron Co., a majority of the members of the Senate Judiciary Committee has given what is the first public review of an obscure but highly important financial transaction (Confidential Report of sub-Committee of Senate Judiciary Committee, February 22, 1909). The merger in question took place during the panic of 1907. At that time certain concerns in New York were holding as collateral security a considerable amount of the stock of the Tennessee Coal & Iron Co. The borrowers becoming embarrassed, it was proposed to have the United States Steel Corporation take over the stock of the Tennessee Coal & Iron Co. and issue its bonds in exchange, thus absorbing the company. The details of the proposed merger were submitted to President Roosevelt in order to secure immunity from subsequent prosecution under the anti-trust law and were approved by him in the belief that the transaction would relieve the money market.

The merger accordingly took place. This matter was called up in the Senate, about the beginning of January, 1909, and request was made both of the President, the Attorney-General, and the Bureau of Corporations, for information about the incident. The information was refused and out of this grew instructions to the Judiciary Committee to investigate the question whether the President's act was authorized. The Judiciary Committee in studying the question personally examined some of the principal participants in the operation and developed facts of much interest in the study

of the iron industry, particularly with reference to the control of iron ore holdings. From the legal standpoint the report now turned in takes the view that the President was not authorized to permit the merger. Incidentally the opinion is expressed that the President was misled by interested persons and that the real object of the whole transaction was to increase the power of the United States Steel Corporation. No appreciable effect in aiding or relieving the money market is recognized as a result of the merger.

President Taft has announced a step of very great importance as one of the forthcoming policies of his administration. This is the reorganization of the Department of Justice, the Interstate Commerce Commission, and the Bureau of Corporations in their relations to one another, so as to secure greater co-operation and less division of function. The idea is to limit the commission more nearly to judicial work, while the Bureau of Corporations partially abandons its purely investigative duties and assumes those of preparing cases for presentation to the commission. The bureau will, according to the plan, also be intrusted with more distinct and definite duties in connection with the work of the Department of Justice. It is suggested that certain activities in the Agricultural Department growing out of the application of inspection laws would also be brought into correlation with the Bureau of Corporations. This important administrative change is mentioned by President Taft in his inaugural address in connection with proposals for a revision of the Sherman anti-trust law. The latter having been made an important point during the later days of the Roosevelt administration, it is now well understood that during the coming winter a renewed discussion of railroad and anti-trust enactments will be initiated. This will, it is believed, give rise to efforts to enlarge the powers of the Interstate Commerce Commission in the matter of jurisdiction as well as to give to it some authority in connection with the issue of securities by interstate railroads.

Comptroller of the Currency Murray has undertaken an inquiry along the lines of that carried on by Comptroller Eckels about twelve years ago. He is obtaining, from the banks, statistics showing the relative amounts of specie, paper currency, and credit instruments received by them, in the course of a day's business, over their counters. This will serve to show how far changes have occurred

in the comparative use of checks and various classes of currency. Mr. Murray is also arranging to begin an investigation designed to show what proportion of bank deposits recorded on the books of banks at any given time has been created by the actual receipt of coin or currency, what percentage has grown out of the deposit of checks and drafts upon other banks and what percentage is the result of discounts and loans made to borrowers who do not take their loans in the form of notes but are credited with them. Both investigations have been initiated at the request of experts in the employ of the National Monetary Commission. The latter body has presented to Congress a summary of investigations ordered by it and now promises to begin active work during the current spring and summer. It has changed in character through the retirement of several of its members from Congress and their retention as private individuals upon the commission. The commission thus changes its character by ceasing to be an exclusively legislative commission. Its "legislative" character was one of the chief grounds upon which its creation was advocated by Senator Aldrich in preference to the mixed commission urged by Chairman Fowler of the House Banking and Currency Commission.

The enormous appropriations made by Congress in spite of the pledge to attempt genuine economy have left the Taft administration face to face with a revenue problem of extraordinary difficulty. According to Chairman Payne of the Ways and Means Committee it will be wholly impossible to depend upon any tariff bill for the means with which to carry on the government upon its present scale of expenditure. It is also clear that the Ways and Means Committee, overburdened with the task of hastily framing a tariff bill, will be unable at any time during the current session to prepare a rounded revenue system. This has led to frequent serious consultations between President Taft, Secretary of the Treasury MacVeagh, and Senator Aldrich. The existing revenue system has been carefully canvassed and the question of supplementary sources of income has been covered. Among the methods which have been under discussion are (1) documentary and other stamp taxes; (2) increased taxes on beer; (3) duties on tea and coffee; (4) inheritance taxes; (5) income taxes; (6) revision of internal revenue taxes generally. Very little attention has been paid to such of these features as are incorporated in the bill of the

Ways and Means Committee as it is recognized that this measure does not even approximate to the law which will be placed on the statute books at the end of the current session. Of the proposed revenue-sources the duties on tea and coffee are strongly antagonized on political grounds and the income tax on constitutional grounds. Stamp taxes and inheritance taxes have been received with most favor. Meanwhile there has been a slight improvement in conditions at the Treasury Department. While the deficit for the fiscal year was nearly \$90,000,000 at the middle of March, the deficit for the month thus far has been unexpectedly small and the Department as a whole is only \$10,000,000 behind the revenue position of last year on the corresponding date. It was \$20,000,000 behind at the opening of the fiscal year, or shortly thereafter.